



Report of Legal Issues Subcommittee



- Taxes and fees
 - Sinclair Paint decision and implications
- Institutional vehicles for dispensing revenues
- Role of this sub-committee
 - Use of auction, allocation revenues (legal constraints)



- Fees can be approved with a majority vote of the legislature
- New or increased taxes require a two-thirds vote of the legislature or voters per Proposition 13 (1978), Proposition 62 (1986), and Proposition 216 (1996)
- Issue has been and continues to be the subject of extensive litigation
- Taxes
 - Imposed for revenue purposes, rather than a specific benefit or purpose
- Fees
 - Charges that recover the cost of providing a service or pay for the cost of regulating specific activities or industries
 - Require that a “nexus” exist between fee and service/activity
- Finally, auction revenues or broad-based fees *may* be considered general fund revenues and subject to general fund restrictions



- Sinclair
 - Challenged the imposition of a fee which provided a dedicated funding source for lead poisoning prevention and treatment
 - California Supreme Court upheld the constitutionality for manufacturers of lead-containing gasoline and paint products
- Court decision ratified the use of fees approved by a majority of the Legislature to address health or other social problems created by the use or production of a particular product.
- Court concluded that:
 - Fee must not exceed the cost of providing services related to the remediation of the problem created by a particular product
 - Fee must “bear a reasonable relationship to those adverse effects”
 - Reasonable connection, or nexus, must exist between the social problems remedied by a fee and the payer of the fee
- Similar case, California Farm Bureau, et al. vs. State Water Resources Control Board, now pending
- LADWP has argued specifically to the CPUC that auctioning allowances constitutes a tax



- SB 31 (Pavley, 2009)
 - ARB may adopt by regulation a schedule of fees to be paid by the sources of greenhouse gas emissions
 - Revenues collected pursuant to this section, or including any revenues generated pursuant to compliance mechanisms adopted by the state board, shall be deposited into the Air Pollution Control Fund
 - Revenues [should be] available, upon appropriation by the Legislature, for purposes of carrying out this division, including, but not limited to, all of the following:
 - The costs of administering this division
 - Renewable energy and energy efficiency programs that reduce greenhouse gas emissions, particularly those programs focusing on low-income consumers
 - Investments in technologies to reduce greenhouse gas emissions, including research, development, and demonstration and deployment, especially technologies that provide pollution reduction cobenefits
 - Green jobs development and training that will reduce greenhouse gas emissions
- Other mechanisms, such as a California Carbon Trust, suggested by ETAAC



- Reactive (not exclusively) to requests from other subcommittees
- Clarification with Allowance Value Subcommittee on use of auction, allocation revenues (legal constraints)